

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ATLANTIC CASUALTY  
INSURANCE COMPANY,

Plaintiff,

Case No. 07 CIV 4098

v.

FORTHRIGHT CONSTRUCTION, INC.,  
WONDER WORKS CONSTRUCTION CORP.,  
VASILIS AFTOUSMIS and CONSTANTIA  
AFTOUSMIS,

**DECLARATION OF  
AIDAN M. MCCORMACK**

Defendants.  
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**AIDAN M. MCCORMACK**, an attorney duly admitted to practice before this Court and the Courts of New York, states the following under penalty of perjury:

1. I am duly admitted to practice law before the United States District Court for the Southern District of New York.

2. I am a member of the law firm Nixon Peabody LLP, attorneys of record for Plaintiff Atlantic Casualty Insurance Company ("Atlantic Casualty"). As such, I am fully familiar with the facts of this matter as set forth herein based upon my review and handling of the file and representation of Atlantic Casualty.

3. I submit this Declaration in further support of Atlantic Casualty's Motion for summary judgment and in opposition to Defendant Forthright Construction Inc.'s ("Forthright") motion for summary judgment. As set forth in Atlantic Casualty's motion papers, Atlantic Casualty owes no coverage since: (1) the independent contractor / subcontractor exclusion bars coverage for the Aftousmis action, (2) Forthright's and Wonder Works' gross late notice also bars coverage, (3) Forthright's material misrepresentations and failure to disclose material

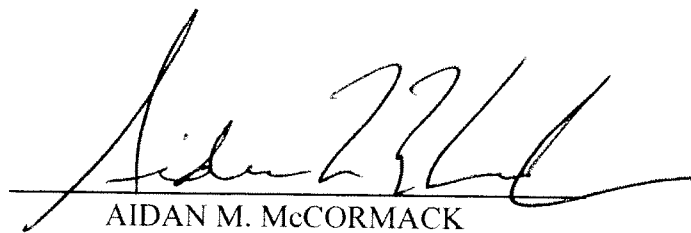
information on the Atlantic Casualty insurance contracts bar coverage, (4) the Subsidence exclusion applies to bar coverage (5) Forthright and Wonder Works have other insurance available for the Aftousmis action, (6) the Claims In Process Exclusion applies to bar coverage, and (7) the alleged damage was not the result of work within the Classification Limitation Endorsement of the 11/24/2005-11/24/2006 insurance contract.

4. Attached hereto as **Exhibit A** are true correct copies of the March 27, 2008, May 9, 2008, and June 23, 2008 letters that Atlantic Casualty sent to Forthright demanding that Forthright produce any and all insurance policies issued to its subcontractors at the project, which were first requested in Atlantic Casualty's First Set of Document Requests.

5. To date, Forthright has not produced any insurance policies issued to any of its subcontractors. At the June 13, 2008 pre-trial conference, Atlantic Casualty orally requested that the parties produce all outstanding documents responsive to Atlantic Casualty's document demands. Moreover, the Court specifically ordered Forthright and Wonder Works to immediately produce any responsive documents or provide a statement that they have produced all responsive documents in their possession. In response, Forthright's counsel provided an affidavit stating that it does not have any further responsive documents in its possession. This includes any of the requested insurance policies for Forthright's subcontractors.

**WHEREFORE**, Atlantic Casualty Insurance Company respectfully requests that this Court grant its motion for summary judgment, declare that Atlantic Casualty owes no coverage obligation with respect to the Aftousmis action, and grant such other and further relief as the Court deems just and proper.

Dated: New York, New York  
August 15, 2008



AIDAN M. McCORMACK